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INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE dated as of February 1, 1971 between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (the "Lessor"), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (the "Lessee").

WHEREAS, Lessor and Lessee have heretofore entered into a Purchase Agreement, dated November 16, 1970, as amended, providing for the manufacture by Lessor and the purchase by Lessee of 400 covered hopper cars, including the 100 covered hopper cars (the "Cars") set forth in Schedule A attached hereto.

WHEREAS, the Lessee presently contemplates the financing of the acquisition of the Cars by means of an equipment trust agreement, or other equipment financing agreement to be executed and delivered at some time after the Cars have been manufactured; and

WHEREAS, Lessee desires to place the cars in service as promptly as possible after the Cars are ready for delivery by Lessor;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Lease and Rental. The Lessor will construct the Cars at its manufacturing plant at Huntington, West Virginia, in accordance with the specifications applicable thereto and any modification

thereof as agreed to between the Lessor and the Lessee (hereinafter sometimes called the "Specifications").

The Lessor hereby leases to the Lessee and the Lessee hereby hires from the Lessor each of the Cars for use upon the lines of railroad operated by Lessor, and for use in the usual interchange or delivery of traffic. Said Lease and use are upon the terms and subject to the conditions hereinafter set forth, such lease to be effective as to each Car for a period beginning with the delivery of such Car and ending as to each such Car (a) on such date as the Lessee shall make payment, or cause payment to be made, for each such Car under a conditional sale agreement, equipment trust agreement, or other equipment financing agreement, or (b) upon purchase of the Cars by the Lessee or assignee of the Lessee pursuant to Article 14 hereof. Such termination of leasing under this Lease may be confirmed by an appropriate instrument executed by Lessor and Lessee.

For the use of each Car, the Lessee agrees to pay daily rental equal to the product of $1/2$ of 1% above the prime annual rate of interest, as charged by First National City Bank of New York during the period rental is earned, times the purchase price for each car, as shown on Schedule A attached hereto, for the period commencing with the delivery of such Car to an authorized

representative of the Lessee and acceptance by the Lessee under the terms of the Lease and ending one day prior to the date of termination of the Lease as herein provided.

The rental on each Car shall be due and payable to the Lessor in cash upon presentation of Lessor's invoice.

2. Delivery. The Lessee shall cause each car to be inspected by an authorized representative of the Lessee at the plant of the Lessor at Huntington, West Virginia. If such car is in good order and condition, and conforms to the Specifications and to all applicable Department of Transportation and Interstate Commerce Commission requirements and to all standards recommended by the Association of American Railroads, such representative of Lessee shall execute a Certificate of Inspection, in the form attached hereto as Exhibit 1, prior to the shipment of the Car from the plant.

The cars shall be tendered by Lessor to Lessee at Russell, Kentucky, whereupon an authorized representative shall execute a Certificate of Acceptance, in the form attached hereto as Exhibit 2. Such Certificate of Acceptance shall constitute conclusive evidence that the Car has been delivered to and accepted by the Lessee under this Lease; provided, however, that Lessor shall not be relieved of its warranties set forth in Article 7 hereof. After the execution of this agreement,

the Lessee shall promptly deliver to Lessor a certificate stating the persons authorized to execute and deliver, on behalf of Lessee, Certificates of Inspection and Certificates of Acceptance under this agreement.

On delivery of each Car by the Lessor at Russell, Kentucky, the Lessee will assume the responsibility and risk of loss with respect to the Cars so delivered.

3. Title to the Equipment. Lessor shall and hereby does retain the full legal title to and property in each of the Cars notwithstanding the delivery of the Cars to and the possession and use thereof by Lessee as herein provided, subject only to the rights of Lessee under this Lease.

Lessee will, throughout the term of this Lease cause the Cars to be kept numbered with identifying numbers as set forth in Schedule A. Lessee will not change the number of any of the Cars without first notifying Lessor in writing. In any such case, the new number shall be set forth in a supplemental lease or in an amendment to this Lease which Lessor and Lessee shall execute, and Lessee shall file or record such supplemental lease or amendment in each jurisdiction wherein this Lease is recorded or filed in accordance with Article 13 hereof.

4. Maintenance and Repair. Lessee shall, at its own cost and expense, maintain and keep said Cars in good order and

repair at all times, subject to the right of Lessor to inspect the condition and supervise the maintenance thereof (but Lessor shall be under no obligation to so inspect and supervise).

However, in the event Lessor does so inspect and supervise as provided in this Article 4, Lessee will not assume liability for any injury to, or death of, any agent or employe of Lessor while exercising these rights. Lessee shall not effect any change in the design, construction or specifications of the Cars or component parts thereof, without the prior authority and approval of Lessor.

5. Loss or Destruction. In the event of loss or destruction of, or irreparable damage to any of the Cars from any cause whatsoever during the term of this Lease, Lessee shall promptly and fully inform Lessor in regard to such loss, destruction of damage, and Lessee shall pay promptly to Lessor, in addition to the rent, if any due for such Car pursuant to Article 1 hereof to the date payment is made pursuant to this Article 5, and performance of all of Lessee's obligations herein, a sum equal to the purchase price of each Car so lost, destroyed or irreparably damaged, as defined in Article 14 hereof, which represents the agreed value for each Car so lost, destroyed or damaged. Upon any such payment pursuant to this Article 5 this Lease shall terminate as to each Car for which payment is made, and Lessor

shall not thereafter have any interest in such Car or in any material salvageable from such Car.

6. Taxes and Compliance with Laws, Rules and Regulations.

Lessee shall promptly pay all taxes (other than income taxes imposed upon Lessor), licenses and assessments on or in respect of the Cars (including any which may be imposed upon or in respect of said Cars by reason of or in connection with Lessee's possession or use of the Cars under this agreement) and agrees at all times to keep said Cars free and clear of all taxes, assessments, liens and encumbrances, and covenants that the Cars at all times hereunder will be maintained, used and operated under and in lawful compliance with the laws, rules and regulations to which they may be subject in any local, state or federal jurisdiction. Any sums of money that may be paid by Lessor at its option by way of release, discharge or otherwise, of any of the foregoing, shall be promptly reimbursed and paid to the Lessor by the Lessee on demand as an additional part of the obligation herein.

Lessee, however, may withhold any such payment so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner and such withholding does not in the judgment of Lessor effect Lessor's title in and to any of the Cars.

7. Lessor's Warranty of Workmanship and Material.

(a) Lessee warrants to Lessee that each Car delivered will comply on the date of its delivery with the Rules of Interchange of the Association of American Railroads (or of any successor thereto) and with all governmental regulations and requirements relating to the construction and equipment of railroad cars of the same character as such Car.

(b) Lessor warrants to Lessee that each Car delivered will comply with the Specifications and be free from defects in material (except as to specialties incorporated therein specified by Lessee) or workmanship or design (except as to designs specified by Lessee) under normal use and service; provided, however, that Lessor's obligations under this subsection (b) with respect to any Car shall be limited to making good at its manufacturing plant, any part or parts of such Car which shall, within one year after the delivery of such Car, be returned to Lessor, with transportation charges prepaid, and which Lessor's examination shall disclose to its satisfaction to have been thus defective. Lessor shall not be liable for indirect or consequential damage resulting from defects in material, workmanship or design.

(c) Lessor's warranties set forth in subsections (a) and (b) of this Article are exclusive and in lieu of all other warranties by Lessor, whether written, oral or implied, except with respect to title of the Lessor to the Cars.

8. Prohibition Against Liens. Lessee will pay or satisfy and discharge any and all sums claimed by any party by, through or against the Lessee and its successors or substitutes or assigned, or a person, firm or corporation using the Cars, which, if unpaid, might become a lien or a charge upon the Cars but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of Lessor in and to the Cars.

9. Lessee's Indemnities and Guaranties. Lessee will save, indemnify and keep harmless Lessor from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the Cars or the use or operation thereof during the term of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the purchase of the Cars by the Lessee as provided in Article 14 hereof, or the termination of this Lease in any manner whatsoever.

Lessee will bear the risk and shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of the Cars; provided, however, that Lessor and any successor or successors to its manufacturing property and business shall not as to the Cars, be relieved from its warranty covering workmanship and material or design

hereinbefore in Article 7 set forth.

10. Patent Indemnities. Lessor, for itself and any successor or successors to its manufacturing property and business, will save, indemnify and keep harmless the Lessee from and against any and all damages, costs, royalties and claims arising out of charges of infringement of United States patents which may be alleged to cover the Cars, articles, or parts thereof, excepting those patents covering the manufacture, sale or use in said Cars, articles, or parts thereof, of designs, devices, parts arrangements, specialties and equipment furnished or specified by the Lessee and as to such excepted United States patents Lessee shall in like manner save the Lessor harmless.

Lessee agrees that it will give prompt notice in writing to Lessor of the commencement of any action in respect of which the Lessor may be charged with liability hereunder, and Lessor agrees to give prompt notice in writing to Lessee of the commencement of any action in respect of which Lessee may be charged with liability hereunder. Said covenants of indemnity shall continue in full force and effect notwithstanding the purchase of the Cars by the Lessee or the termination of this Lease in any manner.

11. Assignments by the Lessors. All or any of the rights, benefits and advantages of Lessor under this agreement may be assigned by Lessor and reassigned by the assignee at any time and from time to time, provided, however, that no such assignment shall subject any assignee to or relieve Lessor or the successor or successors to its manufacturing property and business from any of the obligations of Lessor to construct and deliver the Cars in accordance with the Specifications or to respond to its guarantees, warranties or indemnities contained in Articles 7 and 10 hereof, or relieve Lessee of its obligations to the Lessor under Articles 6, 9 and 10 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of Lessor's right, title and interest in and to the rights, benefits and advantages of Lessor thereby assigned, subject only to such reservations as may be contained in such assignment. From and after the receipt by Lessee of the notification of

any such assignment, all payment thereafter to be made by Lessee hereunder shall, to the extent so assigned, be made to the assignee.

In the event of any assignment by Lessor of its rights to receive any payments under this Lease, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of Lessor in respect of the Cars or the manufacture, construction, delivery, guarantee or warranty thereof, or in respect of any indemnity contained in this Lease, nor subject to any defense, set-off; counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Lessee by Lessor. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Lessee, its successors or assigns, against Lessor, its successors and assigns (other than assignees, as such, of rights, benefits and advantages assigned pursuant to this Lease). The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by Lessee to waive any remedies which it might otherwise possess for the enforcement of any and all such

obligations of the Lessor as against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by payment to the Lessor of the consideration for the assignment of any of the Lessor's rights under this Lease.

12. Assignments by the Lessee. Lessee will not sell, assign, transfer or otherwise dispose of its rights under this agreement nor transfer possession of said Cars to any other form, person or corporation (except as herein otherwise provided) without first obtaining the written consent of Lessor to such sale, assignment or transfer.

13. Recording. Lessee will, at its expense, upon execution and delivery of this agreement cause the same to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended, and wherever else required in order to publish notice of and to protect the title of Lessor to the Cars.

14. Agreement of the Lessee to Purchase. In the event that payment to Lessor for all Cars has not been made prior to June 1, 1971, pursuant to Section 1(a) of this agreement, this Lease is thereby terminated as to all Cars, and the Lessee will immediately purchase or provide a purchaser for all such Cars delivered hereunder on or before that date for which payment

has not been theretofore made to Lessor. The base purchase price for each of the Cars is set forth in Schedule A. Title to the Cars shall vest in the purchaser thereof upon such purchase and payment therefore in cash and delivery shall be deemed to be effected at such points as the Cars shall be at such time.

The base purchase price is subject to increase or decrease in accordance with the Purchase Agreement dated November 16, 1970, between Lessor and Lessee as supplemented or amended.

In the event of any change or modification hereafter made in the Specifications by agreement between Lessor and Lessee, the amount by which such change or modification increases or decreases the cost of the Cars shall be added to or subtracted from, as the case may be, the base purchase price of the Cars.

The term "purchase price" as used herein shall mean the base purchase price as increased or decreased pursuant to the two preceding paragraphs.

15. Default. In the event of any failure at any time on the part of Lessee to comply with any of the terms and conditions contained in Article 1 through 13 hereof, Lessee

at the election of Lessor, which election shall be evidenced by notice thereof in writing given by Lessor to Lessee, shall be obligated to purchase and pay for all of the Cars subject to this agreement within five (5) days after the receipt of such notice (unless within such five-day period such default shall have been cured) in accordance with all the terms and conditions contained in this agreement with respect to purchase of the Cars other than the date for purchase set forth in Article 14 hereof.

In the event of any default by Lessee in respect of any of its obligations under the terms of this agreement, the term of this Lease shall immediately cease and terminate and the Lessor may, without any notice or demand, take or cause to be taken immediate possession of the Cars, and, in such event, all Lessee's rights in the Cars will thereupon terminate; provided, however, that such retaking shall not be deemed a waiver of Lessor's right to receive the full purchase price of the Cars or of any other rights or remedies conferred upon Lessor by this Agreement or by law, and provided, further, that in the event of such retaking and thereafter of the payment by Lessee of the purchase price, together with a sum equivalent to the costs and expenses, including attorney's fees, incurred by

Lessor in such retaking, and the making good of all defaults hereunder, Lessor at the time of such payment shall deliver the Cars to Lessee in the condition they were in when retaken and by appropriate instrument or instruments transfer to Lessee title to and property in the Cars free and clear of all liens and encumbrances. In the event that the payment of the full purchase price is not made by Lessee to Lessor within ten days after the date when payment is due, Lessor, at its option, may within a reasonable time thereafter, sell the Cars, in which event Lessee's rights in the Cars shall cease and terminate and its obligation to pay to Lessor the full amount of the purchase price, plus a sum equivalent to the costs and expenses incurred by the Lessor in retaking the Cars, shall be reduced by an amount equal to the net proceeds of sale of the Cars. As used in this Article 15, the term "purchase price" includes the rent payable pursuant to Article 1, hereof.

16. Payments by Lessee. The payments provided for in this agreement shall be made by Lessee in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public or private debts.

17. Survival of Guarantees, Warranties and Indemnities.

The warranties and indemnities provided for in Articles 7, 8, 9 and 10 hereof (except as may be otherwise specified therein) shall

survive the termination of the Lease hereunder for any reason and the full payment of the purchase price by the Lessee.

18. Extension Not A Waiver. Any extension of time granted by the Lessor to the Lessee for the payment of any sum due under this agreement, or for the performance of any other obligation hereunder, shall not be deemed a waiver of any of the rights and remedies of the Lessor hereunder or otherwise existing.

19. Notice. Any notice hereunder to Lessor shall be deemed to be properly served if delivered or mailed to ACF Industries, Incorporated, 750 Third Avenue, New York, New York, 10017, or at such other address as may have been furnished in writing to Lessee by Lessor. Any notice to Lessee shall be deemed to be properly served if delivered or mailed to The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, Illinois 60604, to the attention of Mr. R. W. Harper, Vice President-Finance, or at such other address as may have been furnished in writing to Lessor by Lessee. Any notice hereunder to any assignee of Lessor or of Lessee shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Lessor or the Lessee, as the case may be, by such assignee.

20. Execution of Counterparts. This agreement may be simultaneously executed in several counterparts, each of which

so executed shall be deemed to be an original, and such counterparts together will constitute but one and the same agreement, which will be sufficiently evidenced by any such original counterpart.

21. Article Headings. All Article headings are inserted for convenience only and will not affect any construction or interpretation of this agreement.

22. Modification of Agreement. No variation or modification of this Railroad Equipment Lease and no waiver of any of its provisions or conditions will be valid unless in writing and signed by the duly authorized officers of Lessor and Lessee.

IN WITNESS WHEREOF, ACF Industries, Incorporated, has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful authority; and The Atchison, Topeka and Santa Fe Railway Company has caused these presents to be executed and its seal to be affixed by its duly authorized officers pursuant to lawful authority, all as of February 1, 1971.

ACF Industries, Incorporated

By



Vice President

ATTEST:

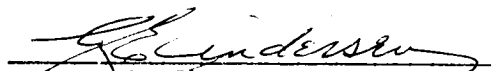

ASSISTANT SECRETARY

The Atchison, Topeka and Santa Fe
Railway Company

By


Vice President-Finance

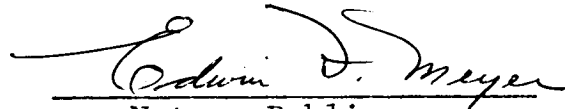
ATTEST:


Assistant Secretary

STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

On this // ²² day of February, 1971, before me
personally appeared W. W. Wilson, to me personally
known, who, being by me duly sworn says that he is

VICE PRESIDENT of ACF Industries, Incorporated,
that one of the seals affixed to the foregoing instrument
is the corporate seal of said corporation, that said in-
strument was signed and sealed on behalf of said corporation by
authority of its Board of Directors, and he acknowledged that
the execution of the foregoing instrument was the free act
and deed of said corporation.



Notary Public
EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1972

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 9th day of February, 1971, before me personally appeared R. W. Harper, to me personally known, who, being by me duly sworn says that he is Vice President - Finance, of The Atchison, Topeka and Santa Fe Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

My Commission Expires MAY 29, 1973

SCHEDULE A

Type

100-ton trough hatch covered
hopper cars with roller bearing
trucks

Quantity

Numbered

Base Purchase
Price Per Car

100

312200 to 312299,
both inclusive

\$15,310.90*

*f.o.b. Huntington, West Virginia

ACF INDUSTRIES, INCORPORATED
750 Third Avenue
New York, New York 10017

CERTIFICATE OF INSPECTION
UNDER RAILROAD EQUIPMENT LEASE

The undersigned, an authorized representative of
The Atchison, Topeka and Santa Fe Railway Company (the "Lessee"),
does hereby certify that the following railroad equipment has
been inspected and approved on behalf of the Lessee, and that
said railroad equipment is in good order and condition and
conforms to all applicable Department of Transportation and
Interstate Commerce Commission requirements and specifications
and to all standards recommended by the Association of
American Railroads:

<u>Type</u>	<u>Quantity</u>
100-ton trough hatch covered hopper cars with roller bearing trucks	

Railroad Numbers

Dated this day of , 1971, at Huntington,
West Virginia.

Authorized Representative of
The Atchison, Topeka and
Santa Fe Railway Company

ACF INDUSTRIES, INCORPORATED
750 Third Avenue
New York, New York 10017

CERTIFICATE OF ACCEPTANCE UNDER
RAILROAD EQUIPMENT LEASE

The undersigned, an authorized representative of The Atchison, Topeka and Santa Fe Railway Company (the "Lessee"), does hereby certify that the following railroad equipment is hereby fully and finally accepted by the Lessee, in accordance with the Railroad Equipment Lease, dated as of February 1, 1971, between the Lessee and ACF Industries, Incorporated, as Lessor:

<u>Type</u>	<u>Quantity</u>	<u>Railroad Numbers</u>
100-ton, trough hatch covered hopper cars, with roller bearing trucks.		

The undersigned further certifies that the above equipment was delivered to the Lessee at Russell, Kentucky, on the date of this certificate.

Dated this day of , 1971, at Russell, Kentucky.

Authorized Representative of
The Atchison, Topeka and
Santa Fe Railway Company